

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 13TH NOVEMBER 2007 / 22ND KARTHIKA 1929

CRP.No. 939 of 2003G()

(AGAINST THE ORDER IN AS.199/95 OF 1ST ADDL. DISTRICT COURT, THIRUVANANTHAPURAM IN OS 8/89 OF SUB 1ST ADDL. SUB COURT, THIRUVANANTHAPURAM.)

REVN. PETITIONERS: APPELLANTS/DEFENDANTS

- 1. KRISHNA PILLAI, CHELLAPPAN PILLAI,
PARAYIL VEEDU, AMACHAL MURI,
KULATHUMMAL VILLAGE.**
- 2. GOPAKUMARAN NAIR @ SURESH OF DO. DO.**
- 3. JUSTIN, PULLUVILAKKU PUTHEN VEEDU,
AMACHAL MURI, KULATHUMMAL VILLAGE.**
- 4. KUTTAN NADAR THANKAPPAN NADAR,
KALIYAKKOTTU PUTHEN VEEDU, AMACHAL MURI,
KULATHUMMAL VILLAGE.**

**BY ADV. SRI.G.P.SHINOD
SRI.RAM MOHAN.G.
SRI.MANU V.**

RESPONDENTS: RESPONDENTS/PLAINTIFFS

- 1. KRISHNAN KOCHUKUNJU PANICKER,
SANTHI NIVAS, ST.MARY'S LANE, PATTOM,
MADATHUVILAKOM VILLAGE,
THIRUVANANTHAPURAM**
- 2. CHELLAMMA SANTHAMMA OF DO. FROM
MUDHIYAVILA PUTHEN VEEDU, AMACHAL MURI,
KULATHUMMAL VILLAGE.**

BY ADV. SRI.VAKKOM N.VIJAYAN

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 13/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:**

**ORDER ON CMP 2248 OF 2003
IN
C.R.P. NO.939 OF 2003**

DISMISSED

13/11/07

SD/- M.N. KRISHNAN, JUDGE.

[True Copy]

P.A. TO JUDGE.

M.N. KRISHNAN, J.

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C.R.P. NO. 939 OF 2003

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Dated this the 13th day of November, 2007.

O R D E R

This revision petition is preferred against the judgment of the 1st Addl. District Judge, Thiruvananthapuram in A.S.199/95. The suit is one for damages. It is the case of the plaintiff that the defendants had trespassed into the property of the 2nd plaintiff, had cut and removed seven rubber trees and damaged nine other trees and thereby had caused considerable loss and so prays for a decree for damages. On the other hand the defendants would contend that they have not committed any act of trespass and that they have not cut and removed any trees therefore the suit has to be dismissed.

2. In the trial Court, Exts.A1 to A3 and B1 were marked. PWs.1 to 4 and DW1 were also examined. On an analysis of the evidence the Court below granted a decree in favour of the plaintiff for Rs.16,000/- and it is against that decision an appeal was preferred. The appellate court re-appreciated the entire materials and confirmed the finding of

the trial court by dismissing the appeal. It is against that decision the present revision is filed. The point that arises for determination in this revision is whether there is any material irregularity or perversity committed by the Courts below in granting a decree in favour of the plaintiff.

Point:

3. The suit is one for damages. According to the plaintiff the defendants trespassed into the plaint schedule property of the 2nd plaintiff, cut and removed seven rubber trees and damaged nine other trees and thereby causing considerable damages. It is refuted by the other side. A perusal of the judgments of the Courts below would reveal that a Commissioner who inspected the property was able to find out that 7 trees have been cut and removed and nine trees were damaged. PWs.1 2 and 4 spoke in support of the contention of the plaintiffs. PW1 had deposed that on 21.2.88 at about 6.30 p.m. the defendants encroached upon the property and cut and removed the trees. A perusal of the Commissioner's report would reveal that a row of 16 rubber

trees were seen just adjacent to the foot path and out of these trees Nos.1 to 3 and 11 to 16 were found destroyed and the other trees were seen cut and removed. The Commissioner's report was proved by examining the Commissioner as PW3. The Courts below concurrently found that there is nothing to challenge the credibility of the evidence of PW3. The Court also found that PW2 is a tapper and even DW1 has admitted that fact and he has also deposed about the act done by the defendants. The Court also found that though PW4 is a relative of the plaintiff his evidence is not a tainted one. It is also a settled principle that if it is intrinsically reliable and inherently probable version, that has to be given weight and not the relationship a ground for rejecting the evidence, if it is otherwise trustworthy. Admittedly the defendants are residing hardly 20 feet away from the plaint schedule property. So, the Courts below on an appreciation of the materials arrived at the decision regarding the damages caused to the rubber trees. The plaintiff has also moved in the right direction by

immediately lodging a criminal complaint before the concerned police station. So far as the damages is concerned the Court also arrived at a figure after taking into consideration the age and other factors of the rubber trees. So, on an evaluation of the entire materials I do not want to interfere with the findings of the Courts below and there is no perversity, illegality or irregularity which calls for interference of the judgments of the Courts below. Therefore, the C.R.P. lacks merit and it is dismissed.

M.N. KRISHNAN, JUDGE.

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CRP NO. 939 of 2003

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M.N. KRISHNAN, J.
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C.R.P. No. 939 OF 2003
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O R D E R

13th November, 2007.